

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTHONY CASIANO,

Plaintiff,

v.

CAPT. THEAGRE, No. 1851;
CORRECTIONAL OFFICER K. LUTON,
No. 5144; CORRECTIONAL OFFICER C.
FOOTE, No. 5509; CORRECTIONAL
OFFICER TIM GRAY, No. 17389;
CORRECTIONAL OFFICER K. SHEPARD,
No. 11487; CORRECTIONAL OFFICER
RUCKER, No. 2398; CORRECTIONAL
OFFICER B. GERADEAU, No. 9037;
CORRECTIONAL OFFICER A.
CAPEHART, No. 3713; CORRECTIONAL
OFFICER SEIVWRIGHT, No. 17414;
NICOLAS FRANTZ; WARDEN KISA
SMALLS; THE CITY OF NEW YORK,

Defendants.

19 Civ 5226 (KPF)

ORDER OF SERVICE

KATHERINE POLK FAILLA, District Judge:

Plaintiff Anthony Casiano, currently incarcerated at Auburn Correctional Facility, brings this pro se action under 42 U.S.C. § 1983, alleging that Defendants violated his rights. By Order dated July 9, 2019, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* (IFP).¹ Plaintiff filed a Third Amended Complaint on January 7, 2021, naming Nicholas Frantz as a Defendant. (Dkt. #151). By letter dated March 3,

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed *in forma pauperis*. See 28 U.S.C. § 1915(b)(1).

2021, the City of New York provided the Court and Plaintiff with information needed to effect service on information Defendant Nicolas Frantz. (Dkt. #165).

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process ... in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)).

Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that the summons and complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summons and complaint until the Court reviewed the complaint and ordered that a summons be issued. The Court therefore extends the time to serve until 90 days after the date the summons is issued. If the complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App’x 50, 52 (2d Cir. 2010) (“As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals’ failure to effect service automatically constitutes ‘good cause’ for an extension of time within the meaning of Rule 4(m).”).

To allow Plaintiff to effect service on Defendant Nicolas Frantz through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S.

Marshals Service Process Receipt and Return form ("USM-285 form") for this defendant. The Clerk of Court is further instructed to issue a summons and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon these defendants.

Plaintiff must notify the Court in writing if her address changes, and the Court may dismiss the action if Plaintiff fails to do so.

CONCLUSION

The Clerk of Court is directed to mail a copy of this Order to Plaintiff.

The Clerk of Court is further directed to amend the official caption to conform to that used in this Order, namely to change Defendant Frantz's name from "Nicholas" to "Nicolas."

Finally, the Clerk of Court is instructed to complete the USM-285 forms with the address for Defendant Nicolas Frantz and deliver all documents necessary to effect service to the U.S. Marshals Service.

SO ORDERED.

Dated: March 4, 2021
New York, New York



KATHERINE POLK FAILLA
United States District Judge

DEFENDANT AND SERVICE ADDRESS

1. Nicolas Frantz, PA
c/o Gwendolyn Renee Tarver
PAGNY-Correctional Health Services
49-04 19th Avenue
1st Floor
Astoria, New York 11105